

the plaintiff has had to pay half the assessment on the land. He has been unable to deliver vacant possession since 1st September, 1964, by which time he had already become the registered proprietor of the land, because of the defendant's refusal to quit. The plaintiff has been kept out of his money since the 1st of September, 1964. He is therefore entitled by way of damages to the amount of interest which that money would have earned during all this period. At the rate of 6% per annum the amount works out at \$34,100. He has also had to pay a total sum of \$11,750 as assessment. I therefore held that the plaintiff was entitled to a sum of \$45,850 by way of damages. I also allowed further damages at the rate of \$1,100 a month, based on the same rate of interest, for any period after 1st May, 1967 that the defendant remains in possession. I gave judgment for the plaintiff accordingly with costs, in addition to the order that the defendant and all those who hold from him do deliver vacant possession of the land on or before 30th April, 1967.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Rajanayagam & Liew.*

EE KIM KIN v. THE COLLECTOR OF LAND REVENUE, ALOR GAJAH

[O.C.J. (Ismail Khan J.) April 29, 1967]

[Malacca — Miscellaneous Application No. 1 of 1961]

Administrative Law — Mandamus — Delay in taking action — Whether reference barred.

Practice and Procedure — Action for mandamus — Recourse to most convenient practice — Practical reasons — Technicalities — Proper administration of justice — R.S.C. 1957, O. 53 & O. 72 r. 2.

Land Acquisition — Inquiry — Claim for compensation — Land Acquisition Ordinance, (S.S. Cap. 128) and Land Acquisition Act, 1960, ss. 10 & 14.

This was an application for an order of *mandamus* directing the collector either to hold an inquiry under section 10 of the Land Acquisition Act in respect of a claim for compensation by the applicant, or to issue an award under section 14 of the Act in respect of certain land acquired by the State Government under the Land Acquisition Ordinance. The applicant, a person interested in the land acquired, claimed that he was never given the opportunity of being heard, thus rendering the proceedings null and void; and he alleged that no formal award was ever made by the collector in respect of his interest which had been so acquired.

The land in question was acquired for road improvement in 1956. At the inquiry held under section 10 of the Ordinance one LSS agreed to the award of \$8,714.50 of which \$5,950 was to go to the applicant as his share of compensation. The applicant admitted that he was present at the land office on the day of the inquiry, but he did not take part and was never heard as he was told to stay out. In due course the applicant received payment of his share of compensation. After receipt thereof with full knowledge as to what payment was for, he took no action until approximately a year later in 1957 when he addressed a letter to the District Officer

A requesting that action be taken to prevent risk of damage to his bungalow by reason of the proximity of the new highway.

Held: (1) as the applicant had accepted the compensation pursuant to the award he was estopped from saying it was not an award;

B (2) the delay of over 4½ years presented an insuperable obstacle barring any reference to the court. This obstacle cannot be circumvented by resort to an application for *mandamus* because the application must rest strictly on the grounds which had been put forward and no other.

Observations on recourse to the most convenient practice commends for practical reasons.

Cases referred to:—

C (1) *Nana Ofori Atta II v. Nana Abu Bonsra II* [1957] 3 W.L.R. 830.

(2) *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* [1921] 2 K.B. 608, 611.

APPLICATION FOR MANDAMUS.

F. K. Sellar for the applicant.

D Mohamed Salleh bin Abbas (Legal Adviser, Malacca) for the respondent.

Cur. Adv. Vult.

E Ismail Khan J.: This is an application by way of motion for an order of *mandamus* directing the Collector of Land Revenue, Alor Gajah, either to hold an inquiry under section 10 of the Land Acquisition Act, 1960, in respect of a claim for compensation by the applicant, or to issue an award under section 14 of that Act in respect of a certain parcel of land acquired by the Government of the State of Malacca under the provisions of the Land Acquisition Ordinance (S.S. Cap. 128) which Ordinance has now been repealed and replaced by the 1960 Act.

F As grounds for this application, it was said, first, that the applicant, a person interested in the land acquired, was never given the opportunity of being heard at a purported inquiry held by the collector, thus rendering the proceedings null and void; secondly, that no formal award was ever made by the collector in respect of the applicant's interests which had been so acquired.

G The land in question was a portion of Lot 12 comprised in S.L.G. 21798 situate at Melekek in the district of Alor Gajah. Lot 12 itself was part of an estate of over 200 acres owned by one Lai Sai Siong and another who applied in May, 1955, for the sub-division thereof into a number of lots of approximately five acres each. By an agreement dated 11th May, 1955, the applicant purchased from them two adjoining parcels of land about 10 acres in total area including an estate bungalow thereon for \$8,300, and other purchasers bought the remainder.

H On 18th October, 1956, appeared *Gazette Notification No. 252* that purchases of Lot 12 and Lot 1141 were acquired by the State Government for road improvement. This

affected the kitchen of the applicant's bungalow, a brick wall, a water tank and some fencing. The sub-divided portion which the applicant had purchased was not yet registered in his name, but of Lot 1141 he was the registered proprietor.

On 3rd December, 1956, pursuant to the provisions of section 10 of the Ordinance, the Collector of Land Revenue purported to hold an inquiry at the District Office, Alor Gajah, in respect of Lot 12. The record of inquiry showed that notice had been served on 15th November, 1956. It was claimed that although the collector was well aware that the applicant and three others were interested as purchasers of Lot 12, the only person present and heard at the inquiry was Lai Sai Siong who agreed to the award of \$8,714.50 of which \$5,950 was to go to the applicant as his share of compensation. This application became necessary because the collector would neither agree to hold an inquiry under section 10, nor make a formal award under section 14, as respectively requested.

At the commencement of this application the State Legal Adviser raised a preliminary objection to the procedure to be followed. He argued that under our Rules of the Supreme Court, Order 53 should apply rather than Order 59 of the English Rules by virtue of the provisions of Order 72, Rule 2. It was pointed out that we do not have Order 59 corresponding to that in England. I cannot understand why our Order 53 was expressed to have effect only in the States of Penang and Malacca. Be that as it may, I incline with respect to the views of Dr. Bashir Mallal (see his *Supreme Court Practice*, vol. 1, p. 724) particularly as in this case, recourse to the most convenient practice commends itself for practical reasons. I do not think that mere technicalities should have such overriding effect as to place an impediment to the proper administration of justice. Rules of procedure should be the hand-maiden not the master, for even if successful, the objection can only have the effect of delaying the decision of issues raised and serve no practical purpose. I therefore disallowed the objection.

The main issue is a question of fact, namely, was the applicant present at the inquiry and given the opportunity of being heard? Apart from affidavit evidence, oral testimony was given on both sides by deponents who attended for cross-examination. The conflict, however, can be resolved by certain established facts.

The applicant admitted that he was at the Land Office on the day of the inquiry, although he said he appeared before the collector only in respect of another separate inquiry concerning his own land Lot 1141. In respect of Lot 12, he said that he and three others, similarly interested as purchasers, were told to stay out. They consequently took no part in that inquiry

A and were never heard. Lai Sai Siong on the other hand deposed otherwise. The fact, however, remains that in the record of the inquiry under the hand of the collector it was stated as follows:—

“Registered owner: Lai Sai Siong

B Present at hearing: Lai Sai Siong

New owners not yet registered: Ee Kim Kin
Chua Teng Chiang
Gan Te
Koh Kai Seng.”

C There is of course some ambiguity in that these four persons could either have been present to give their names, or the same could have been supplied by Lai Sai Siong. Fortunately, the surrounding circumstances enable me to overcome the difficulty. In the first place, the applicant was present at the Land Office. It is inconceivable, therefore, that when interested persons were actually present an experienced collector should have told them to stay away, contrary to the provisions in an Ordinance with which he was familiar. *Omnia praesumuntur rite et solemniter esse acta*. In the second place, why were Chua, Gan and Koh at the Land Office on the same day as they claimed, except in response to notice to attend the inquiry which affected their interests in Lot 127. Unlike the applicant, who was also interested in his own Lot 1141, they had no other business to be at the Land Office. In the third place, it is equally clear that in due course the applicant received payment of his share of compensation. Although the date of payment of his share cannot be precisely ascertained from the record, it cannot be denied that after receipt thereof with full knowledge as to what the payment was for, he held his hands and took no action until 12th November, 1957, when he addressed a letter to the District Officer in Alor Gajah requesting that action be taken to prevent risk of damage to his bungalow by reason of the proximity of the new highway. This letter according to the applicant himself was written approximately twelve months after the receipt of compensation. This was hardly the conduct of a person who instead of being heard, had been sent out of the Land Office while an inquiry affecting his interests was taking place. For the above reasons I find as a fact that the applicant's allegations were untrue. In any event, even if he were sent out, he not only knew that an inquiry was being held in respect of Lot 12, but he also accepted the award. As a result, he is estopped from questioning the proceedings or award. (See *Nana Ofori Atta II v. Nana Abu Bonsra II* ⁽¹⁾). His explanation for the delay was that at the time he did not realise the effect of the land acquisition on this bungalow; he did not know that he could ask for a reference to court and he made no inquiries. He agreed that his Lot 1141 had been lawfully acquired as he had been heard at the inquiry in the District

Office. As regards Lot 12, he did not start proceedings until August, 1961.

This delay of over four and a half years clearly presents an insuperable obstacle barring any reference to the court. (See sub-sections (3) and (4) of section 18 of the Ordinance which was in force at the relevant time.) Can this obstacle be circumvented by a resort to an application for *mandamus*? In my view, it cannot because the application must rest strictly on the grounds which had been put forward and on no other. These grounds are two, namely:—

- (a) that the applicant had had no opportunity of being heard;
- (b) that no formal award had ever been made.

I have found that the first ground was untrue. As to the second, I do not think that the applicant should be allowed to blow hot and cold. He who had accepted compensation pursuant to an award is estopped from saying it was not an award. See judgment of Scrutton L.J. in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.*,⁽²⁾ which reads:—

“A plaintiff is not permitted to ‘approve and reprobate’. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument. . . . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approve and reprobate the transaction.”

This incidentally disposes of a point of law raised by counsel for the applicant that the collector in this case was not properly vested with authority to conduct the inquiry in respect of Lot 12.

For the above reasons I would dismiss the application with costs.

Application dismissed.

Solicitors: *Sault, Keith Sellar & Co.*

SHIRO (CHINA) LTD. & ORS. v. THAI AIRWAYS INTERNATIONAL LTD.

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Chua J.) May 3, 1967]

[Singapore — Federal Court Civil Appeal No. Y29 of 1966]

Carriage by Air — International carriage — Successive carriers — Loss by theft — Air consignment note not containing full particulars — Reliance on Warsaw Convention relating to International Carriage by Air 1929, to exclude liability — French text — First schedule to the Carriage by Air Act, 1932, art. 8(i), 9.

Practice and Procedure — Meaning of words in foreign text — Duty of counsel — Expert evidence.

This was an appeal against the decision of Ambrose J. (reported in [1967] 1 M.L.J. 109), exempting the

A defendants, air carriers, from liability for loss of eight cases of watches consigned to the plaintiffs.

The defendants were carriers of the goods from Bangkok to Singapore. The goods were stolen while they were in the defendants' possession at the Singapore Airport. The air consignment note had only stated the weight of the goods. In a claim by the plaintiffs for damages for loss of the goods, the defendants contended that as the air consignment note had complied with the provisions of article 8(i) of the French text of the Warsaw Convention relating to International Carriage by Air, 1929, they were entitled to rely on article 20 of the Convention to exempt themselves from liability. The plaintiffs argued that the consignment note had not stated either the volume or the dimensions of the goods, and it had therefore not complied with article 8(i) of the Convention as set out in the First Schedule to the Carriage by Air Act, 1932.

Held: (1) the only English translation of the Warsaw Convention which was properly before the court was that as set out in the First Schedule to the Carriage by Air Act, 1932. It was the duty of counsel who wished to submit that the meaning of words in a foreign language was ambiguous, to call expert evidence on the point. In the absence of such expert evidence, it was not open to the learned judge to decide that article 8(i) of the Convention was ambiguous;

(2) article 8(i) of the Convention provides that the air consignment note shall contain particulars of the weight, the quantity and the volume or dimensions of the goods. In this case, as only the weight of the goods was stated in the air consignment note, the note did not contain all the required particulars, and therefore, the defendants were not entitled to avail themselves of the provisions of the Convention which exclude or limit their liability.

Cases referred to:—

- (1) *The Borneo Co. Ltd. v. Braathens South American & F. E. Air Transport A. S.*, [1960] M.L.J. 201.
- (2) *Sellamani Ammal v. Thillai Ammal* (1946), L.R. 73 I.A. 264, 270; A.I.R. 1946 P.C. 185.

FEDERAL COURT.

G. S. Hill and M. Karthigesu for the appellants/plaintiffs.

J. Grimberg for the respondents/defendants.

G *Cur. Adv. Vult.*

Tan Ah Tah F.J.: On the 7th September, 1962 eight cases containing watches were delivered to Air France by Sacom Pour Le Commerce D'Outre-Mer of Switzerland for carriage by air from Basle-Mulhouse to Singapore. The air waybill, which was the air consignment note, provided that the goods were to be carried by Air France from Basle-Mulhouse to Bangkok and by Japan Air Lines from Bangkok to Singapore.

In point of fact the watches were carried by the defendants, Thai Airways International Ltd., from Bangkok to Singapore. The gross weight of the consignment was 80.5 kilograms and the value of the watches was \$53,142.97. The watches were stolen while in the defendants' possession at the airport in Singapore. The first plaintiffs had purchased them from the Swiss consignors and the second plaintiffs were the consignees.